IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 501

DUKE WATER CO.,

Petitioner,

vs.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,

Respondent.

Petition for a Writ of Certiorari to the Supreme Court of the State of California and to the Public Utilities Commission of the State of California.

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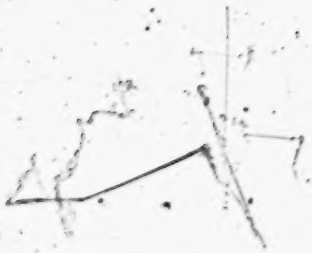
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OCTOBER TERM, 1961

No. .....

DYKE WATER CO.,

Petitioner,

vs.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,

Respondent.

Petition for a Writ of Certiorari to the Supreme Court of the State of California and to the Public Utilities Commission of the State of California.

Petitioner prays that a writ of certiorari issue to review the decision of the Supreme Court of the State of California affirming Decision No. 49828 of the Public Utilities Commission of the State of California.

Opinions Below.

Decision No. 59828 of the Public Utilities Commission of the State of California is reported at 57 Cal. P.U.C. 586 (1960) [Appendix, Ex. "A," *infra*, p. 1.] The decision of the Supreme Court of the State of California, affirming the aforesaid decision of the Public Utilities Commission is reported at 56 A. C. 95 (1961) [Appendix, Ex. "G," *infra*, p. 67.] The pro-

posed report of the hearing officer is unreported, and is printed in the Appendix hereto. [Appendix, Ex. "I," *infra*, p. 107.]

Jurisdiction.

The jurisdiction of the Supreme Court of the United States to review this cause on petition for a writ of certiorari rests on the provisions of 28 U. S. C. §1257(3). Petitioner has fully exhausted all remedies available in the lower courts. Timely petitions for rehearing were filed before the Public Utilities Commission of the State of California and the Supreme Court of the State of California. [Appendix, Ex. "B", *infra*, p. 12; Appendix, Ex. "H," *infra*, p. 97.] The petition for rehearing before the Supreme Court of the State of California was denied by order of the California Supreme Court on July 19, 1961, and the decision of the Supreme Court of the State of California sought to be reviewed is now final. The federal questions herein were raised by the pleadings at all stages of the proceedings below. [Petition for Rehearing before Commission, Appendix, Ex. "B", *infra*, p. 12; Petition for Writ of Certiorari or Review, Appendix, Ex. "D," *infra*, p. 24.]

Questions Presented.

Throughout the proceedings below, culminating in the order denying a petition for rehearing before the Supreme Court of the State of California, petitioner, Dyke Water Co., contended that the rates ordered by the respondent Commission are confiscatory and constitute a denial of due process of law to petitioner; that the procedure employed by the respondent Commission constituted a denial of due process of law to petitioner; and that the opinion and order of the re-

spondent Commission in Decision No. 59828 [Appendix, Ex. "A," *infra*, p. 1] constituted a denial of due process of law to petitioner. The questions presented herein include the following:

(a) Are the rates ordered by the respondent Commission and the order of the respondent Commission with respect to metering confiscatory, and do they constitute a denial of due process of law to petitioner?

(b) Did the Commission err in refusing rehearing for the purpose of presenting evidence of the *actual* results of petitioner's operation before the issuance of the respondent Commission's Decision No. 59828, instead of the mere estimates which were all that had been available at the time of hearing, and if so, was the petitioner thereby denied due process of law?

(c) Did the respondent Commission err in adopting findings of the hearing officer but rejecting his conclusions and adopting contrary conclusions and, if so, was the petitioner thereby denied due process of law?

(d) Did the respondent Commission err in not hearing oral argument of petitioner, and, if so, was the petitioner thereby denied due process of law?

(e) Was the order to install meters beyond the jurisdiction of the respondent Commission, and if so, does the order constitute a denial of due process of law to petitioner?

(f) Was the respondent Commission's order directing the installation of meters so unreasonable as to constitute a denial of due process of law to petitioner?